

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the matter of unauthorized diversion by:

**HARRIET JEAN PIPER, WILLIAM PIPER, MATTHEW PIPER,
CAROLE CANAVERI, KATHLEEN STORNETTA
AND MANCHESTER RIDGE LLC**

SOURCE: Unnamed Stream tributary to Alder Creek thence Pacific Ocean

COUNTY: Mendocino County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Harriet Jean Piper, William Piper, Matthew Piper, Carole Canaveri, Kathleen Stornetta (Piper et al.) and Manchester Ridge LLC (Manchester), are alleged to have violated Water Code section 1052, subdivision (a), which states:

“The diversion or use of water subject to [division 2 of the Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass.”

2. Water Code section 1052, subdivision (b), provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom administrative civil liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights the authority to issue a complaint to impose an ACL under Water Code section 1055, subdivision (a). Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights is authorized to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

ALLEGATIONS

4. The following facts provide the basis for the alleged trespass:
 - a) Records of the Mendocino County Assessor's Office show that Piper et al., is the current owner of Mendocino County Assessor's Parcel Number 132-260-03 located at 39000 Crispin Road and has owned the property since at least July 1, 1996. Aerial photographs show that reservoirs are located on this property and have been in existence since at least 2003.

- b) During a June 16, 2003 onsite field inspection requested by Manchester, Division staff observed the existence of four reservoirs in various stages of construction within the project located at 39000 Crispin Road and operated by Manchester. After reviewing the project area and comparing the development with topographic and aerial maps of the area, the Division concluded that at least two of the reservoirs, existing Reservoir No. 1, storing approximately 30 acre-feet (AF) of water located within the NE¼ of the NE¼ of Section 16, T13N, R16W, MDB&M, and proposed Reservoir No. 3, located within the NE¼ of the SW¼ of Section 15, T13N, R16W, MDB&M, were located on stream channels with beds and banks and were subject to the permitting authority of the State Water Board. Water stored in the reservoirs is to be used to irrigate 150 acres of vineyard.
- c) On September 11, 2003, the Division sent a letter of finding to Manchester. The letter advised that existing Reservoir No. 1 was storing water subject to the permitting authority of the State Water Board and Reservoir No. 3, if constructed, would store water subject to the permitting authority of the State Water Board. The letter gave Manchester 60 days to either: (1) submit evidence showing how these two reservoirs are not subject to the permitting authority of the State Water Board; (2) submit evidence supporting an existing water right authorizing storage of water; (3) submit an application to appropriate water by permit for storage; or (4) submit a plan including a timetable to render the reservoirs incapable of storing water. The Division's letter also informed Manchester of the State Water Board's discretionary authority to initiate enforcement action for any unauthorized diversion without further notice.
- d) On November 21, 2003, Mr. Chris Stone, agent for Manchester, replied with a letter stating that he believed the reservoirs were not subject to the State Water Board's permitting authority. Mr. Stone enclosed a Wetland Delineation report prepared by Golden Bear Biostudies, Inc. that included a discussion indicating that stream channels begin at the point where groundwater surfaces. He concluded that since his reservoirs are located up-channel of this point, he was not within the State Water Board's permitting authority.
- e) On February 5, 2004, the Division, after reviewing the Wetland Delineation report including the claim that stream channels begin at the location where groundwater surfaces, concluded Reservoir Nos. 1 and 3 were still within the State Water Board's permitting authority. The Division restated its prior conclusion that the reservoirs were built onstream and bed and banks exist throughout the reservoir sites. Manchester was directed to resolve the matter within 30 days through one of the following actions: (1) file an application to appropriate water; or (2) provide a plan demonstrating how water subject to the State Water Board's permitting authority would not be stored in the Reservoir Nos. 1 and 3. The Division advised that failure to provide the requested information would lead to enforcement action as allowed by Water Code section 1052, subdivision (b), which allows the Division to impose a civil liability of up to \$500 per day for each day of unauthorized diversion.
- f) On September 17, 2004, the Division received a letter from Beyers, Costin, and Case, attorneys representing Manchester. They requested copies of all correspondence in this matter, as Chris Stone had left the company and failed to route all documents to the appropriate party. On December 9, 2004, the Division mailed the requested correspondence regarding this matter to Mr. Cameron Scott Kirk of Beyers, Costin, and Case.
- g) On December 14, 2004, Division staff contacted the Mendocino County Assessor's Office and learned that the current owners of Mendocino County Assessor's Parcel Number 132-260-03 are Harriet Jean Piper, William Piper, Matthew Piper, Carole Canaveri and Kathleen Stornetta, dating back to June 2003.

- h) An aerial photograph dated August 12, 2006, from Manchester's website depicts water storage in existing Reservoir No. 1 and a limited amount of storage in Reservoir No. 3. The collection of water to storage in Reservoir Nos. 1 and 3 constitute an unauthorized diversion of water.
- i) As of the date of this action, the Division has not received an application for a permit to appropriate water to storage, or any response from the parties.

PROPOSED CIVIL LIABILITY

- 5. The basis of this Complaint is Piper et al., and Manchester's unauthorized diversion and consumptive use of the water from the unnamed stream at Reservoir No. 1 and development of storage capability and limited storage at Reservoir No. 3, since at least 2003. This unauthorized diversion and use of water constitutes a trespass within the meaning of Water Code section 1052, subdivision (a).
- 6. The maximum civil liability that can be imposed by the State Water Board in this matter is \$500 for each day in which the trespass occurred. Based on at least three years of unauthorized diversion and use of water by Piper et al., and Manchester, a maximum civil liability of \$547,500 could be considered (\$500 per day x 365 days x 3 yrs.) for the trespass.
- 7. In determining the amount of civil liability, Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator. In this case, Manchester diverted water to storage from the unnamed stream for at least 3 years without a legitimate basis of right, and subsequently used that stored water for irrigation. Manchester's continued unauthorized diversions have reduced the amount of water available for downstream diverters. Additionally, while the adverse impacts of unauthorized water diversions on the steelhead trout and Coho salmon fishery have not been quantified for this case, unauthorized diversions of water contribute to the cumulative impact of reducing habitat for steelhead trout and Coho salmon in Alder Creek. On August 18, 1997, the National Marine Fisheries Service listed the steelhead trout and Coho salmon as threatened under the Federal Endangered Species Act and the California Department of Fish and Game lists both as species of special concern. As of the date of this Complaint, Piper et al., and Manchester have failed to take any corrective actions despite being informed of the unauthorized status in writing.
- 8. Piper et al., and Manchester received an economic advantage over other legitimate water users producing vineyards in the area by foregoing the costs of buying water or pumping groundwater from a well, forgoing the cost of filing for a water right, and forgoing the cost of annual water right fees assessed other water right permit holders. The Division estimates the avoided cost for obtaining 30 acre-feet of water in the local area to be about \$6,350, annually. Additionally, the Division estimates that its staff cost to conduct the field inspection, prepare an inspection report and the enforcement documents to be \$3,220. The water right filing fee for 30 acre-feet would be \$1,300, and the annual water right fee for the last three years would be \$301.
- 9. Having taken into consideration all the factors described above, the Deputy Director for Water Rights recommends an Administrative Civil Liability (ACL) in the amount of **\$23,870**. This liability amount is the minimum liability recommended by the Division; although the State Water Board may consider a different liability, if this matter goes to hearing.

RIGHT TO HEARING

10. Piper et al., and Manchester may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date this notice is received. (Water Code, § 1055, subd. (b).)
11. If Piper et al., and Manchester request a hearing, they will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
12. If Piper et al., and Manchester request a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the Water Code, and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
13. If Piper et al., and Manchester do not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth in paragraph 9 above, to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

14. If Piper et al., and Manchester do not request a hearing and do not remit the ACL, the State Water Board may seek recovery of the ACL as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

**ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:**

*Victoria A. Whitney, Deputy Director
Division of Water Rights*

Dated: JUL 10 2008